IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 464

UNITED STATES OF AMERICA,
Petitioner,

—against—

CARLOS MUNIZ and HENRY WINSTON,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT CARLOS MUNIZ

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Constitutional and Statutory Provisions Involved: and Status of Jurisdiction Over Federal Property Involved

Pertinent provisions of the United States Constitution, Art. 1, §8, cls. 14, 17, 18; Art. VI, cl. 2; of 18 U. S. C. §4042 prescribing "Duties of Bureau of Prisons", and of the Federal Tort Claims Act, 28 U. S. C. §§1346(b), 2674, 2676, 2679 and 2680 are set forth in Appendix A, infra.

Incident thereto, in lieu of various Federal and State statutes involved, a list provided by the United States Department of Justice showing the "Status

of Jurisdiction over Prison Properties within the United States corr ed to June 30, 1962" is set forth in Appendix B, in

Qu tion Presented

Whether the Tort Claims Act entitles a person to recover damages for personal injury sustained while a prisoner when caused by the negligent or wrongful act or omission of employees of the Government while acting within the scope of their office or employment upon the staff of the Federal prison.

Statement of the Case

Respondent Carlos Muniz, while confined in the Federal correctional institution at Danbury, Connecticut, pursuant to an order of a Judge of the United States District Court, was struck by inmates of the institution on or about August 24, 1959, while outside a dormitory known as "Berkshire House". He was pursued by twelve inmates into another dormitory known as "Concord House", and was then locked therein by one of the guards. The twelve prisoners then beat plaintiff with chairs, sticks and other instruments, sustaining injuries as a result of which he underwent a series of operations, having sustained a fracture to his skull, lost vision in his right eye, and other serious and permanent injuries (R. pp. 64-65).

His action for damages was dismissed by the District Court (Hon. Edmund L. Palmieri, D. J.) under Fed. R. Civ. P. 12(b) (6) for failure to state a claim upon which relief can be granted. Upon appeal to

the United States Court of Appeals for the Second Circuit, a panel of that Court (Clark, Hincks and Kaufman, C.Js.) reversed, with Judge Kaufman dissenting. At his request, rehearing en banc was had, and the full Court also reversed, by a majority of 5 to 4. This Court granted certiorari upon petition by the Government in this and the companion case of Henry Winston.

Summary of Argument

The case is one involving a violation by prison officials and employees of duties prescribed by Act of Congress, requiring that they provide for the safekeeping, care and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise, and provide for the protection, instruction and discipline of all persons charged with or convicted of offenses against the United States (18 U. S. C. §4042); and the right to such protection and safekeeping this Court has held "is a right secured to them by the Constitution and laws of the United States" (*Logan* v. *United States*, 144 U. S. 263, 284).

Having such rights, it is "hornbook law" that injury sustained as a result of their violation would carry a right of recovery, in the absence of sovereign immunity, and this immunity has been eliminated by the Tort Claims Act (*Indian Towing Company* v. *United States*, 350 U. S. 61, 64-65; *Rayonier, Inc.* v. *United States*, 352 U. S. 315, 319).

Contrary to the Government's contention and the argument advanced by the dissenting Judges, the

provision respecting "the law of the place" is not to be read or applied as though it specified the law of the "State" as a sole source of duties or rights or as making Government liability depend on State law to the exclusion of any applicable Federal law; and the presage and foreboding that to allow any Federal prisoner to recover damages must undermine the Federal prison system and laws by making Federal prison officials, employees and prisoners "subject" instead to State laws regulating State prisons is not merely overdrawn but is without any foundation in the statute.

The specification in the statute itself of the Canal Zone and the Virgin Islands, and the Constitutional provision (Art. 1, §8, cl. 17) and decisions respecting the District of Columbia and other federal enclaves themselves preclude limiting the statute to recoveries under State law or for violation of duties prescribed only by State laws. But if and to the extent that State law may or must be applied, such application itself must involve also applying as a part thereof any and all applicable Federal laws, as already done by this Court in *Hatahley* v. *United States,* 351 U. S. 173 and *Hess* v. *United States,* 361 U. S. 314. And *Richards* v. *United States,* 369 U. S. 1 involves application of analogous reasoning where, however, there was no Federal death statute which could be applied.

The circumstances and principles involved in the decision of *Feres* v. *United States,* 340 U. S. 135, instead of requiring or justifying any holding of nonliability herein, by their very absence and total difference here, show a clear case of liability by "hornbook law" principles. The alternative, existing before the enactment of the Act, and which the dissents

and the Government Brief seek to reestablish, itself (1) completely differentiates and distinguishes the *Feres* decision, and (2) establishes clearly that the claim of Muniz is within the Tort Claims Act. Discipline of prisoners cannot be affected except by improvement by application of the Act. And the contention that the Federal Courts and Judges are incompetent is totally unfounded.

ARGUMENT

I. In any case whatever under the Act the requisite "employee" and scope of employment are Federal; some duties at least are in all cases federally imposed, some may in some cases be State imposed and, according to the "circumstances" of the case, the "negligent or wrongful act or omission" may be in violation of any Federal or State law, rule or regulation to which the employee is subject; the Act is comprehensive and takes as it finds it, without restriction, limitation or substitution, the "law of the place", to which the employee and person injured may be subject at the time, whether State law, Federal law, enclave law, or a combination thereof; this includes Federal statutes regulating prisons and prescribing the duties of the Bureau of Prisons; and the presage and foreboding in the dissenting opinions and the Government's brief are not merely overdrawn, they are without any support whatever in the Act.

The bulk of the dissenting opinions and the Government's Brief is their passionate defense of the Federal prison system against a suppositious innova-

tion whereby State prison laws would be substituted for and thereby undermine and supplant Federal prison law; specifically, their insistance, with pronounced presage and foreboding, that Federal laws, rules and regulations relating to Federal prisons and prisoners must not be undermined by substituting therefor and subjecting them instead to the divergent laws of States either enacted by State legislatures or established by State courts or State prison authorities for the government of State prisons and State prisoners with no reference whatever to or authority with respect to Federal prisons and prisoners.

The basis for such argument both in the dissenting opinions and in the Government's Brief is the assumption and the repeated assertion—repeated so often that it would seem to be the primary premise of their arguments—that the Tort Claims Act takes cognizance only of State law, makes Government liability "depend on" State law and "turn on the law of the State in which the alleged negligent conduct took place"; that, as stated in the Government's Brief, "Application of the Tort Claims Act to prisoner claims would subject the prison system to the divergent laws of the States in which prison facilities are located, since the law of the State in which the tortious conduct occurs applies in Tort Claims Act suits"; and that this "would undermine the uniform, federal character of the prison system" (Government Brief, pp. 18-19). Judge Kaufman similarly argues that it would "make a lottery out of the prisoner's right to recovery" (R. p. 16). So far is this argument carried, indeed, that the dissent of the en banc minority even claims that the "strange result" must occur in a State that does not recognize or (like the Tort Claims Act itself) has excluded

jailer liability but does permit suits by State prisoners against the State, that by reason of such law of the State relating to State prisoners "federal prisoners will have no remedy against the Government although state prisoners have a remedy against the state" (R. p. 53).

In view of this almost sole content of the dissenting opinions and the Government's Brief, it is surprising that little or no effort is made to examine and test its premise. The argument upon careful examination falls of its own weight for lack of a sound premise to support it.

The Court did not grant certiorari herein merely to do justice between Muniz and the Government (Cf. *Rudolph* v. *United States*, 370 U. S. 269). And while, of course, the immediate question is that of whether the Act applies to tort claims by federal prisoners for money damages for personal injuries caused by the negligent or wrongful act or omission of anyone employed by the Government, the Act itself does not particularize or differentiate any class whatever (except certain particularized exceptions to which the Act shall not apply); and if, as respects a federal prisoner claim it is valid as a major premise to assert unqualifiedly that liability "depends on" *State* law, it must be equally so with respect to any claim whatever made under the Act.

There are, of course, cases involving "circumstances" under which a State law may be violated and in which State law therefore constitutes the significant "law of the place" (See, for example, *Brooks* v. *United States*, 337 U. S. 49, involving negligence of a

soldier driving an army truck; *Capital Transit Co.* v. *United States*, 340 U. S. 110, involving negligence of a soldier driving a government jeep). They simply signify that if the duty violated is one prescribed by State law, it remains so under the Tort Claims Act, and the question of a causative "negligent or wrongful act or omission" of the Government employee must be determined by the State-law prescribed duty.

But if, on the other hand, the duty violated is one prescribed by Federal law, it equally remains so under the Tort Claims Act. That Act simply takes as it finds it any applicable "law of the place", whether it be State law, Federal law, enclave law, or a combination thereof, and does not confine this to State law only.

In the first place, the Act does not in any of its relevant provisions even use the words "State" or "law of the State". That this was intentional and that the word "place" in the phrase "law of the place" is not limited to and does not mean exclusively "State", so as to require or even justify reading it as "law of the State" is manifest even from the fact that 28 U. S. C. §1346(b) confers jurisdiction upon the district courts "together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands"; since neither the Canal Zone nor the Virgin Islands is a state. Compare the distinguishment between the words "States" and "Places" as used in Art. 1, §8, cl. 17 of the Constitution.

In the second place, there are within the country countless enclaves; and, as this Court recently held

in *Paul* v. *United States*, 371 U. S. 245, 263, decided January 14, 1963:

> "The power of Congress over federal enclaves that come within the scope of Art. 1, §8, cl. 17, is obviously the same as the power of Congress over the District of Columbia. The cases make clear that the grant of 'exclusive' legislative power to Congress over enclaves that meet the requirements of Art. 1, §8, cl. 17, by its own weight, bars state regulation without specific Congressional action".

At counsel's request, the Department of Justice has provided us with a statement of the "Status of Jurisdiction over Prison Properties within the United States corrected to June 30, 1962", a copy of which is attached hereto as an appendix. As appears therefrom, most of the Federal prisons are not State located, but enclave located. This is notwithstanding the fact recited in *Paul* v. *United States, supra*, 371 U. S. at 264, that "Since 1940 Congress has required the United States to assent to the transfer of jurisdiction over the property, however it may be acquired", citing 40 U. S. C. §255.

In listing "24 States" in which federal prisons are said to be located, the Government's Brief (p. 25) includes the District of Columbia, which certainly is not a state, but itself an enclave; and the dissenting opinion also states that there are 31 institutions "in 24 States"—which, therefore, includes the District of Columbia.

There are, in addition, all manner of enclaves over which the Federal Government exercises exclusive jurisdiction.

This Court has repeatedly held that: "As respects such federal territory Congress has the combined powers of a general and state government" (*Pacific Coast Dairy* v. *Department of Agriculture*, 318 U. S. 285, 294), "thus possessing the combined powers of a general and of a state government in all cases where legislation is possible" (*Stoutenburgh* v. *Hennick*, 129 U. S. 141, 147).

To the extent, if at all, that divergent "State" laws apply, as "the law of the place" upon any of the Federal prison enclaves, therefore, this is not by virtue of any provision of the Tort Claims Act, but by reason of other Federal legislation specifically respecting the applicability of State laws (e. g., 16 U. S. C. §457, respecting applicability of State laws to cases of death by neglect or wrongful act, or personal injury, applied in *Stokes* v. *Adair*, 4 Cir., 265 F. 2d 662, cert. denied 361 U. S. 816 to personal injury sustained in an automobile accident on the United States military reservation enclave of Fort Leavenworth; and 18 U. S. C. §13, respecting guilt and punishment for any offence not covered by an Act of Congress but which would be punishable if committed in the jurisdiction of the state, territory, possession, or district "in which such *place* is situated"—applied in *United States* v. *Sharpnack*, 365 U. S. 286, to sex crimes committed "at the Randolph Air Force Base, a federal enclave in Texas".) See also *Mater* v. *Holley*, 5 Cir., 200 F. 2d 123.

In the third place, whether State located or enclave located, the right of Federal prisoners to be protected against assault or injury from any quarter "is a right secured to them by the Constitution and laws of the United States" (*Logan* v. *United States*,

144 U. S. 263, 284, and see pp. 285, 294, 295). In keeping with the principles respecting duties and rights stated in that decision, Congress has prescribed by statute (18 U. S. C. §4042) as "Duties of Bureau of Prisons" that it shall "Provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offences against the United States, or held as witnesses or otherwise", and shall "Provide for the protection, instruction, and discipline of all persons charged with or convicted of offences against the United States". As *Logan* v. *United States, supra,* shows, "The existence of that duty on the part of the government necessarily implies a corresponding right of the prisoners to be so protected". These duties and corresponding rights secured to them by the Constitution and laws of the United States can in no respect be supplanted or overruled by State law.

In the fourth place, even assuming that the word "place" in the statute meant "State", so that State laws must or might be looked to in the first instance, such is our federal system that applicable federal law such as 18 U. S. C. §4042 must be applied as the law of the State or "place".

In *Richards* v. *United States,* 369 U. S. 1, the plane crashed in Missouri while enroute from Oklahoma to New York. The Court held that in multistate tort cases, the Tort Claims Act required looking in the first instance to the law of the place where the acts of negligence took place and, in absence of any applicable Federal interstate wrongful death statute, this meant the law of Oklahoma. But the Oklahoma law, which contained no specific limitation of the amount of recovery, contained a conflict of law rule

which would require applying, under Oklahoma law, the Missouri death statute which limited recovery; and this Court held that since the amount recoverable under Missouri law had been paid or tendered, nothing remained to be litigated.

The same or analogous principle is no less controlling to require the application of the relevant Federal law; and at least two decisions of this Court have so held.

In *Hatahley* v. *United States*, 351 U. S. 173, 178, after pointing out that the range manager of the Department of Interior had failed to comply with the Federal Range Code, 43 CFR §161.1 et seq. issued pursuant to §2 of The Taylor Grazing Act, 48 Stat. 1270, 43 U. S. C. §315a, the Court said:

> "It is clear that both the written notice and failure to comply are express conditions precedent to the employment of the local procedures. The Code is, of course, the law of the range, and the activities of federal agents are controlled by its provisions. They are required to follow the procedures there established."

These were, of course, federally imposed, and with the State law therefore obliged to treat them as controlling. At p. 180, the Court further said:

> "But having concluded that there was no statutory authority, we are faced with the question whether the government is liable under the Federal Tort Claims Act for wrongful and tortious acts of its employees committed in an attempt to enforce a federal statute which they administer.

We believe there is such liability in the circumstances of this case."

In *Hess* v. *United States,* 361 U. S. 314, 318-319, the Court held that because Graham's death and the wrongful act or omission which caused it occurred in the State of Oregon, liability must be determined in accordance with the law of Oregon; but since death occurred on navigable waters, the controversy was within the admiralty jurisdiction, which was a federal matter, and "Oregon would be required, therefore, to look to maritime law in deciding it"; and that "Although admiralty law itself confers no right of action for wrongful death", "In such a case the maritime law enforces the State statute 'as it would one originating in any foreign jurisdiction' ".

Equally as The Taylor Grazing Act and Federal Range Code in the *Hatahley* case and the federal maritime law in the *Hess* case, even if State law be given initial application herein, it would be required in deciding it to look to the Federal law regulating federal prisons and prescribing the duties and rights owed to prisoners under Federal law, instead of to any State law regulating state prisons and prescribing the duties and rights owed to prisoners in state prisons.

Regardless of what federal prison an injured prisoner be in at the time of injury, the Federal Constitution and statutes must be looked to in determining the duties and rights involved, and upon those Federally prescribed duties and rights being violated so as to occasion personal injury such as involved herein, it is then "hornbook law" that liability follows, in the absence of sovereign immunity (*Indian Towing Com-*

pany v. *United States*, 350 U. S. 61, 64-65; *Rayonier, Inc.* v. *United States*, 352 U. S. 315, 319).

The "Duties of Bureau of Prisons" statute, 18 U. S. C. §4042, obviously was fashioned upon the reasoning of this Court in *Logan* v. *United States, supra*, 144 U. S. 263, 284, 285, 294, 295, and was enacted with a view to statutorily pronouncing *rights* of federal prisoners to safekeeping, care, subsistence and protection, while in custody and thereby "deprived of all means of self-defense" (144 U. S. 295). As respects the duty and correlative right, no distinction is made between those convicted and serving a sentence and those merely charged with an offense, or even those "held as witnesses or otherwise." If, therefore, a convicted prisoner is without right under the Tort Claims Act, so also is anyone held as a witness or in protective custody.

If and to any extent that the law of Connecticut be deemed the "law of the place", in the first instance or otherwise, it fully supports recovery herein. *Leger* v. *Kelley*, 142 Conn. 585, 589; *Somers* v. *Hill*, 143 Conn. 476, and *Stiebitz* v. *Mahoney*, 144 Conn. 443, establish that the Connecticut law is that for a Connecticut official to be personally liable it must only be for failure to perform a ministerial rather than judicial duty and "only if the statute creates a duty to the individual".

The very arguments of the dissents and of the Government's Brief herein are that the duties of the Bureau of Prisons and its guards or other employees are administrative or ministerial. And the "Duties" statute itself (18 U. S. C. §4042) prescribes duties

owed to the individual prisoner; and this also would be necessarily so under *Logan* v. *United States, supra*, 144 U. S. 263, decided without the benefit of a statute such as 18 U. S. C. §4042. The claim of Muniz therefore fully meets any requirement of even the most stern decisions of the Connecticut courts.

In *Hawthorne* v. *Blythewood, Inc.*, 118 Conn. 617, the Court sustained a recovery of damages for wrongful death by suicide against a private hospital where the jury was justified in finding that:

> "Under the circumstances his voluntary submission to the authority of the sanitarium raised an implied obligation on its part to give him such reasonable care and attention for his safety as his mental and physical condition required" (118 Conn. 617)

Here, the obligation or "Duties" need not be "implied", since they are expressly provided by 18 U. S. C. §4042.

In *Bergner* v. *State*, 144 Conn. 282, suit was for death of an inmate of Norwich State Hospital under a special act which consented to suit but provided that "all legal defenses are reserved to the State". The Court held that this did not reserve the defense of sovereign immunity or the statute of limitations which had already run but where the special act provided that action might be brought "on or before January 1, 1956".

Here, the dissents and the Government's Brief similarly argue that notwithstanding the Tort Claims Act waiver of immunity, acceptance of vicarious

liability and consent to be sued for the negligent or wrongful act or omission of "*any* employee of the Government", there is still available the defense of immunity for failure to particularize the very claim of Muniz. There is no basis for this contention whether under Federal law or Connecticut law. And there is no basis whatever for the contention that liability to Muniz would undermine the Federal prison system as established by the applicable acts of Congress.

II. "All the circumstances" such as the *Feres* decision held should be examined completely differentiate and distinguish this from the *Feres* case and establish clearly that the claim of Muniz is within the Tort Claims Act.

A chief contention by the dissents and the Government's Brief is that the liability provision of the Tort Claims Act does not particularize the claims of prisoners. But neither did it particularize an Indian's claim for horses wrongfully taken from a grazing range involved in *Hatahley* v. *United States, supra*, 351 U. S. 173, nor any other type of claim or claimant other than the requirement that the injury be caused by the "negligent or wrongful act or omission of any employee of the Government . . . under circumstances" such as would occasion liability in accordance with "the law of the place."

The particularization is of the exceptions. The Indian's claim in *Hatahley* was not specified as an exception. Neither was the claim of one such as Muniz. And neither was the *Feres* claim.

The "circumstances" which operated to exclude recovery by *Feres* are not present in the claim of Muniz; while "circumstances" more impelling than those which occasioned liability in *Hatahley* are present in the claim of Muniz.

As pointed out in *Feres*, "The primary purpose of the Act was to extend a remedy to those who had been without; if it incidentally benefited those already well provided for, it appears to have been unintentional" (340 U. S. 140).

Soldiers and their dependents were "well provided for"; indeed, the Court pointed out at 340 U. S. 145, 146, that not only was such provision "not negligible or niggardly", but that, as the cases themselves demonstrated, it would probably exceed what could be recovered under the Tort Claims Act if it were applied (e. g., the *Griggs* widow would receive in excess of $22,000, whereas she sought and could seek only $15,000 by application of the Tort Claims Act, 340 U. S. 145).

By contrast, Muniz like Hatahley would be unprovided for unless by the Tort Claims Act.

On the other hand, just as the range manager owed Hatahley duties prescribed by Federal statute, the Bureau of Prisons owed Muniz duties prescribed by 18 U. S. C. §4042. Feres, however, could not claim any similar position.

Hatahley and Muniz would have no judicial review of the conduct of those owing any duty unless pursuant to the Tort Claims Act or other statute; the con-

duct of Feres and his fellow soldiers was subject to full review by courts martial.

The United States Attorney who prosecuted the prisoners who injured Muniz has informed counsel that such prosecution was in the United States District Court, and ten of the twelve were convicted. By contrast, offenses under the military law could be prosecuted only by military tribunals.

In *Kurtz* v. *Moffitt*, 115 U. S. 487, 500, this Court pointed out that "In the United States, the line between civil and military jursidiction has always been maintained." The establishment of a right of a soldier to recover damages by civil suit in District Court thus would, contrary to all tradition, require the civil Courts to review what was exclusively controlled by military law.

Moreover, in *United States* v. *Yellow Cab Co.*, 340 U. S. 543, 550, decided at the same term as *Feres*, the Court emphasized that "the overwhelming purpose of Congress was to make changes of procedure which would enable it to devote more time to major public issues". *Feres* had emphasized that private bills were not used in the case of soldiers.

What is the alternative the dissents and the Government's Brief suggest for one such as Muniz? They point to no provision other than the Tort Claims Act which would afford him relief. They propose, however, that if such as he are to be afforded relief under the Act, it should be by amendment thereof—amendment, that is, to specifically particularize prisoners as claimants. This is notwithstanding that prisoners are

not within the exceptions, although the negligent or wrongful act or omission of "*any* employee" is amply comprehensive to cover the negligence of a prison employee. Meanwhile, they propose that they be left to seek relief by special act, and even argue that Congress has superior facilities for investigation—directly contrary to the recognition even in *Feres* of "the inadequacy of Congressional machinery for determination of facts" "and the capricious result" (340 U. S. 140).

The proposal of the dissent "that Congress, with its ample fact finding facilities, should be given the opportunity to undertake an extensive investigation into the matter" (R. p. 47) is a proposal directly contrary to the Congressional purpose.

If their claim were justified that Congress did not really think of any prisoner claim, it would undoubtedly be equally true that an Indian claim for horses was not specifically thought of or mentioned in debate. But exception (h) in 28 U. S. C. §2680 would seem indicative that imprisonment at least was had in mind, since it excepts any claim arising out of "false imprisonment, false arrest". But it does not except other claims by persons imprisoned or under arrest.

"Discipline" respecting prisoners is entirely different from discipline requisite to military efficiency. Soldiers must of necessity obey instantly and fully any order; and whether it be an order violative of military law can only be investigated by court martial procedure. But violations of the duties prescribed in 18 U. S. C. §4042 cannot be licensed or justified on any theory of discipline of prisoners.

Moreover, disciplinary action was not taken, but wholly neglected, when Muniz was seeking to avoid twelve dangerous inmates. And if it could excuse negligent conduct endangering Muniz, it must equally excuse conduct endangering persons "held as witnesses or otherwise", since they are mentioned as deserving of the same safekeeping and care as those who have been convicted (18 U. S. C. §4042).

It is noteworthy also that there is nothing in the military law thus placing non-soldiers in a like class, as respects duties or rights, with soldiers themselves.

The statutory provisions for time off for good behavior is certainly more appealing and potent than the suggestion that a false claim might be improvised merely to secure a trip to Court. The suggestion, moreover, is inapplicable to this case.

The decisions cited on p. 30 of the Government's Brief involved efforts to obtain mandamus, habeas corpus, injunction or other orders whereby to supervise or control the administration of the prisons.

We do not repeat, but adopt entirely, the other arguments and authorities of the masterly majority opinions below.

III. The suggested incompetence of the Courts is groundless.

Every argument made by the dissents and in the Government's Brief of incompetence of the Courts is both directly contrary to the Congressional view, and equally as inapplicable as in the case of any other controversy.

This Court recently considered similar argument respecting the incompetence of a jury under charge of the Court in *Salem* v. *United States Lines*, 370 U. S. 31, 35, and, in reversing the Court of Appeals which had reversed a judgment of the District Court, said:

> "If the holding of the Court of Appeals is only that in this case there are peculiar fact circumstances which made it impossible for a jury to decide intelligently, we are not told what those circumstances are, and our examination of the record discloses none. If the holding is that claims which might be said to touch upon naval architecture can never succeed without expert evidence, neither the Court of Appeals nor the respondent refers us to any authority or reason for any such broad proposition." (370 U. S. 35).

In *People* v. *Van Allen*, 55 N. Y. 31, 39, the Court said respecting asserted incompetence of counsel to participate in courts martial:

> "The argument of ignorance is answered by the fact that these courts, in taking evidence, proceed according to the rules of the common law . . .; and the argument that counsel might

confuse the court would apply, in a degree, to exclude them from all courts."

Still more unfounded, therefore, is the contention that all the District Courts are incompetent. If in a given case one appears to be so or commit error, a remedy is available by appeal. But the contention that only an appointive official such as the Attorney General or a prison guard is competent is absurd.

CONCLUSION

The judgment sustaining the complaint of respondent Muniz should be affirmed.

Respectfully submitted,

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APPENDIX A

Art. I, §8, clauses 14, 17 and 18, of the United States Constitution provide:

"Section 8. The Congress shall have Power . . .

To make Rules for the Government and Regulation of the land and naval Forces;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—

And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Art. VI, cl. 2, provides:

"This Constitution, and the laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; . . ."

Statutory Provisions

18 U.S.C.A. § 4042 provides:

> "§ 4042. Duties of Bureau of Prisons.
>
> The Bureau of Prisons under the direction of the Attorney General, shall—
>
> (1) Have charge of the management and regulation of all Federal penal and correctional institutions;
>
> (2) Provide suitable quarters and provide for the safekeeping, care, and subsistance of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;
>
> (3) Provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States.
>
> This section shall not apply to military or naval penal or correctional institutions or to persons confined therein. (Act of June 25, 1948 c. 645, 62 Stat. 849)."

The statutory provisions of the Federal Tort Claims Act are contained in 28 U.S.C.A. § 1346(b) and Chapter 171, §§ 2671-2680.

The jurisdictional provision, 28 U.S.C.A. § 1346(b), provides:

> "Subject to the provisions of Chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the

> Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States for money damages, accruing on and after January 1, 1945, for injury or loss of property or . . . personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

Chapter 171 thus referred to in § 1346(b) is entitled "Tort Claims Procedure" and embraces §§ 2671-2680. Of these sections there are relevant here the liability provision, § 2674, the provision for barring actions against an employee of the Government (§ 2676), the exclusiveness of remedy provision (§ 2679) and the exceptions provision (§ 2680).

The liability provision, § 2674 provides:

> "The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, . . ."

The bar provision, § 2676 provides:

> "§ 2676 Judgment as bar. The judgment in an action under section 1346(b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter against the employee of the Government whose act or omission gave rise to the claim."

The exclusiveness provision, § 2679 provides:

"§ 2679 Exclusiveness of Remedy. The authority of any Federal agency to sue and be sued in its own name shall not be construed to authorize suits against such Federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive."

The exceptions provision, § 2680 provides:

"§ 2680. Exceptions.

The provision of this chapter and section 1346(b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise by any officer of customs or excise or any other law-enforcement officer.

(d) Any claim for which a remedy is provided by sections 741-752, 781-790 of Title 46, relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1-31 of Title 50, Appendix.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(g) Any claim arising from injury to vessels or to the cargo, crew or passengers of vessels, while passing through the locks of the Panama Canal or while in Canal Zone waters. (Repealed September 26, 1950 c. 1049, 64 Stat. 1038, 1043.)

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slender, misrepresentation, deceit, or interference with contract rights.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatent activities of the military or naval forces, or the Coast Guard during the time of war.

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority.

(m) Any claim arising from the activities of the Panama Railroad Company. (Changed by amendment September 26, 1950, c. 1049 64 Stat. 1038, 1043 to now read:)

(m) Any claim arising from the activities of the Panama Canal Company."

APPENDIX B

List Provided by Department of Justice, March 14, 1963

October 31, 1962

STATUS OF JURISDICTION OVER PRISON PROPERTIES WITHIN THE UNITED STATES CORRECTED TO JUNE 30, 1962

Institution	Acres	Jurisdiction
Alcatraz		
Since time of acquisition by Mexican treaty, it has been Federally held, which includes military use.	22.5	Exclusive
Atlanta		
Granted 1899, page 94, State of Georgia	300.0	Exclusive
Granted November 3, 1958, recorded 4/21/59	1224.6	Exclusive
Purchased after 2/1/40, filed with Governor 11/3/58	27.2	Partial
(1) *Eglin*—Permitted land of the Eglin Air Force Base		Exclusive or Partial
(2) *Greenville*—Permitted land of the Donaldson Air Force Base	20.5	Exclusive
(3) *Montgomery*—Part of the Air Force Base, having exclusive on some, partial on some. Contact: Miss Helen E. Fry 131/74407	26.0	Exclusive or Partial

Institution	Acres	Jurisdiction
Leavenworth (Kansas)		
Staff Review Memorandum 1-18-56 —Main Reservation	486.6	Partial
VA Land	71.0	Exclusive
	557.6	
Leavenworth (Missouri)		
Public Domain Land—Since no deed was recorded, no jurisdiction was transferred	995.0	Proprietary
Purchased F. L. Bryan (1959)	99.33	Proprietary
	1094.33	
Lewisburg		
3-26-31—Special Act of March 26, 1931	947.7	Exclusive
(1) *New York*—Deed of Cession by Governor 11/6/30	.3	Exclusive
Allenwood	4226	Undetermined
Marion		
Transferred from Dept. of Interior 12/4/59	921	Exclusive

Institution	Acres	Jurisdiction
McNeil Island		
Remington's Revised Statutes Secs. 8108-8109	4409.4	Exclusive
Limited jurisdiction by the State Legislature over tidelands adjacent—accepted by Attorney General July 28, 1958.		
Terre Haute		
Plat filed 2-12-40, acknowledged by Governor 1-22-40 (II Indiana Stat. Sec. 62-1001) and plat filed 5-24-44.	2713.1	Exclusive
Alderson		
Laws of West Virginia cedes exclusive jurisdiction with recording of deed	473.4	Exclusive
Chillicothe		
Act passed May 6, 1902, amended May 10, 1902, amended May 12, 1902	1597.2	Exclusive
El Reno		
Staff Review Memorandum 1-18-56	1026.2	Proprietary
Concho Lands, PL 86-792	1000.0	Proprietary
National Training School for Boys		
Exclusive jurisdiction in District of Columbia	313.8	Exclusive

Institution	Acres	Jurisdiction
Petersburg		
Staff Review Memorandum 1-18-56	874.0	Exclusive
Springfield		
Laws of Missouri Sec. 6923 cedes exclusive jurisdiction with recording of deed.	442.0	Exclusive
Ashland		
Required plat filed per memorandum 6-25-40 in accordance Kentucky Stat. Annotated Sec. 2376 and 3.025	269.6	Exclusive
Danbury		
Laws of Connecticut, Sec. 7172, General Statutes cedes exclusive jurisdiction.	241.1	Exclusive
Lands purchased after the Act of February 1, 1940	146.3	Proprietary
	387.4	
Englewood		
Staff Review Memorandum 1-18-56 and Governor's letter of January 15, 1959	640	Exclusive

Institution	Acres	Jurisdiction
La Tuna		
Deed of Cession by Governor 7-30-31	635.8	Exclusive
(1) *Florence*—Withdrawn from Public Domain October 28, 1912 for military purposes.	456.5	Proprietary
(2) *Safford*—F.R. Doc. 58-6340 Filed 8-7-58	160	Proprietary
(3) Tucson—Staff Review Memorandum 1-18-56	2875.	Proprietary
Milan		
No evidence of required plat filed or acceptance by U.S. of several tracts acquired after 2-1-40 (40 USC 255)	508.2	Proprietary
Sandstone		
Ceded by Statutes 1927, Chapter 1, Sec. 6-1. Amended by House File 314, Approved 1939	2885	Exclusive
Not accepted by U.S. (40 USC 255), was partial jurisdiction accepted over these 80 acres 8/3/62	80	Partial
Seagoville		
(783) Deed of Cession 7-13-39 recorded Dallas County Records Volume 2142, pp. 610 thru 617 and (40A) 7-22-59 recorded in volume 5050 page 29.	823.	Exclusive
	4.11	Proprietary

Institution	Acres	Jurisdiction
Tallahassee		
Recorded in Leon County Deed Record Book 38 page 159.	793	Exclusive
Terminal Island		
Staff Review Memorandum 12-12-55 stated this as exclusive.	33.6	Exclusive
Texarkana		
Deed of Cession 8-21-57 recorded in Bowie County Record Book 353 pages 3-5.	692.5	Exclusive